

If a taxpayer pays an amount of tax under the Retailers' Occupation Tax that is not due, either as a result of a mistake of fact or an error of law, the taxpayer may file a claim for credit with the Department. (This is a GIL.)

June 12, 2002

Dear Xxxxx:

This letter is in response to your letter dated February 12, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

As explained in the Attachment to this letter, this is a claim for refund of duplicative sales tax paid in error by AAA. Because of the unusual manner in which the duplicative sales tax payments arose, AAA would appreciate your providing guidance as to how to proceed in processing this claim.

I look forward to hearing from you and if you have any question, please feel free to contact ###.

We are enclosing a copy of 86 Ill. Adm. Code 130.1501 concerning Claims for Credit. Claims for credit and refunds are available when a person shows that he paid tax to the Department as a result of a mistake of fact or law. Only the remitter of the tax erroneously paid to the Department is authorized to obtain a refund. In order to obtain a credit, one must first demonstrate that he or she has borne the burden of the tax erroneously paid. Claims for credit shall state the requirements that are contained in subpart (b) of the regulation.

Please note that the Department has no authority to compel the seller to file a claim for credit. Whether or not the seller files a claim for credit with the Department is a private business matter.

Where an Illinois registered seller makes a sale in Illinois, it must either charge tax or document an exemption. To purchase items of tangible personal property tax-free for the purposes of resale, purchasers should submit properly completed Certificates of Resale to sellers. In order for a Certificate of Resale to be valid in Illinois, it must contain the items of information set out in 86 Ill. Adm. Code 130.1405(b), enclosed.

Please remember that for a registration or resale number to be valid on an Illinois Certificate of Resale, it must be active at the time of sale. An Illinois registration or resale number becomes

effective on the date it is issued. A resale certificate is not valid if it contains a registration number that is not active or is discontinued at the time of sale.

Section 2c of the Retailers' Occupation Tax Act contains the following provision that allows "other evidence" to be submitted by a purchaser to document the fact that its sale is for resale:

"Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale or that a particular sale is a sale for resale." 35 ILCS 120/2c

Such evidence would consist of, for example, an invoice from the purchaser to its customer, showing that the item purchased was actually resold, along with a statement from the purchaser explaining why it had not obtained an active registration or resale number and certifying that the purchase was a purchase for resale in Illinois. The risk run by companies in accepting such certification and the risk run by purchasers in providing such certification is that an Illinois auditor is more likely to go behind a Certificate of Resale that does not contain a valid resale number and require that more information be provided by companies as evidence that the particular sale was, in fact, a sale for resale. See 86 Ill. Adm. Code 130.225(d).

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Shane McCreery

By:

Jerilynn T. Gorden

Senior Counsel – Sales and Excise Taxes

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